IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17521 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

WIPRO LIMITED (LIGHTING DIVISION) - Petitioner(s)

Versus

KAMLESH CHANDRAKANT BHATT - Respondent(s)

==========

Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,
MR NR SHAHANI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/08/2005

ORAL JUDGMENT

1.Rule. Service of Rule is waived by Mr. N.R.Shahani, learned advocate appearing on behalf of the respondent. With the consent of the learned advocates for the

parties the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner-management has challenged the legality and validity of the judgment and award passed by the Labour Court, Ahmedabad dated 6.8.2004 passed in Reference (LCA) No.1433/1997 by which the Labour Court has directed the petitioner to reinstate respondent employee with 75% backwages with continuity of services.

3. The respondent employee was serving as an Assistant Accountant in the Account Branch of the Lighting Division of the petitioner-company that his services came to be terminated w.e.f. 21.7.1997 and therefore, the respondent raised industrial dispute challenging the same and the dispute was referred to the Labour Court, Ahmedabad for its adjudication being Reference (LCA) No.1433/1997. It was contended on behalf of the respondent employee that before terminating the services of the respondent employee, neither any show-cause notice and/or departmental inquiry has been initiated nor any retrenchment compensation is paid and therefore, it was requested to reinstate him in services. The said Reference was resisted by the

petitioner by submitting that the respondent is not the employee of the petitioner and therefore, there is no question of any retrenchment compensation by the petitioner and/or committing any breach of Section 25-F of the I.D.Act by the petitioner and therefore, it was requested to dismiss the Reference.

4. On appreciation of evidence, the Labour Court found and held that the respondent employee was serving with the petitioner and as he has worked for more than 240 days in the last preceding year and as before terminating his services, no departmental inquiry has been held, nor any retrenchment compensation is paid and/or notice pay is paid, the Labour Court directed the petitioner to reinstatement the respondent employee with 75% backwages. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Ahmedabad, passed in Reference (LCA) No.1433/1997, the petitioner-management has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5. Shri N.K.Majmudar, learned advocate appearing on behalf of the petitioner has vehemently submitted that the

Labour Court has materially erred in coming to the conclusion that the respondent was the employee of the petitioner. He has further submitted that the Labour Court was not justified in drawing adverse inference by not producing the documentary evidence on the part of the petitioner as the onus is upon the respondent to prove that he had worked for 240 days in the last preceding year and further to prove that he is the workman of the petitioner. Shri Majmudar has relied upon the judgments of the Honble Supreme Court in case of ***Rajasthan State Ganganagar S. Mills Ltd. V/s. State of Rajasthan and Another*** reported in ***2004(8) S.C.C. p.161*** and in case of ***M.P.Electricity Board V/s. Hariram*** reported in ***2004(8) S.C.C. p.246*** in support of his above submission.

6. The present petition is opposed by Shri N.R.Shahani, learned advocate appearing on behalf of the respondent employee. He has produced on record the depositions and the evidence which were before the Labour Court in support of his submission that the Labour Court on appreciation of evidence has rightly come to the conclusion that respondent employee was serving with the petitioner. He has further submitted that in view

of the fact that the petitioner has never disputed that the respondent employee has not worked for 240 days in the last preceding year, the finding given by the Labour Court is just and proper and in consonance with the evidence therefore, the same is not required to be interfered with by exercising powers under Articles 226 and 227 of the Constitution of India and therefore, it is requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties.

8. It is required to be noted that on appreciation of evidences oral and documentary, the Labour Court has specifically given finding that the respondent employee was serving with the petitioner and he is the employee of the petitioner. This is a petition under Articles 226 and 227 of the Constitution of India. This Court is not required to re-appreciate the evidences on record, more particularly, when the finding given by the Labour Court is based upon the evidence. When on appreciation of evidence the Labour Court has given finding that the respondent employee was serving with the petitioner,

the same is not required to be interfered with by this Court exercising powers under Articles 226 and 227 of the Constitution of India. This is finding of fact given by the Labour Court on appreciation of evidence. So far as drawing of the adverse inference by the Labour Court with regard to completion of 240 days by the respondent employee is concerned, it is required to be noted that the petitioner has never disputed that the respondent employee has not worked for 240 days, on the contrary what was disputed by the petitioner was that the respondent employee is not the employee of the petitioner. Under the circumstances, the judgments which are cited at the bar on behalf of the petitioner is not of any assistance to the petitioner.

9. Considering the aforesaid facts and circumstances of the case, there is no substance in the present Special Civil Application and the same is required to be dismissed and the same is, accordingly, dismissed. Rule stands discharged however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.